

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

DEVERON MURPHY,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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Case No. 08-cv-745-JPG-DGW

**MEMORANDUM AND ORDER**

This matter comes before the Court on Magistrate Judge Philip M. Frazier's Report and Recommendation ("R & R") (Doc. 43) of February 15, 2011. In his R & R, Magistrate Judge Frazier advises the Court to grant the Government's Motion for Summary Judgment (Doc. 23). While neither party filed an objection to the R & R, Murphy filed an incredibly belated response to the Government's summary judgment motion *after* submission of the R & R. Doc. 45. Magistrate Judge Frazier promptly struck said response because of its untimeliness and because Murphy did not obtain leave of court prior to its filing; as such, the Court has not considered Murphy's response in its review of the R & R.

After reviewing a report and recommendation, the Court may accept, reject, or modify, in whole or in part, the findings or recommendations of the magistrate judge in the report. Fed. R. Civ. P. 72(b). The Court must review *de novo* the portions of the report to which objections are made. The Court has discretion to conduct a new hearing and may consider the record before the magistrate judge anew or receive any further evidence deemed necessary. *Id.* "If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error." *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

Here, because neither party filed an objection to the R & R, the Court has reviewed the R & R for clear error and finds it not to be clearly erroneous. As such, the Court **ADOPTS** the R & R (Doc. 43) in its entirety, whereby the Court **GRANTS** the Government's Motion for Summary Judgment (Doc. 23) and **DISMISSES** Murphy's medical malpractice claim **with prejudice**. Further, the Court **DIRECTS** the Clerk of Court to enter judgment accordingly at the close of this case.

**IT IS SO ORDERED.**

**DATED: March 24, 2011**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**